

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Inbound Competitive Multi Service Agreements with
Foreign Postal Operators (MC2010-34)
China Post Group
Negotiated Service Agreement

Docket No. CP2015-136

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE CONCERNING ADDITIONAL
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENT
WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT
(WITH CHINA POST GROUP)

(September 11, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2699.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Notice of its entry into an additional bilateral agreement for inbound competitive services with the China Post Group.² The Postal Service seeks to include the inbound portion of a bilateral agreement with China Post (China Post 2015 Agreement) within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (Competitive Multi-Service Agreements) product. Notice at 1.

Included as Attachment 1 to the Notice is a public (redacted) version of the China Post 2015 Agreement. A certified statement, as required by 39 CFR §3015.5(c)(2), that the competitive prices comply with 39 U.S.C. §3633(a), is provided in Attachment 2. Attachment 3 is a public copy of Governors' Decision No. 10-3 and related analysis. An

¹ Order No.2699, Notice and Order Concerning Additional Foreign Postal Operators 1 Negotiated Service Agreement, September 4, 2015.

² Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, September 3, 2015 (Notice).

application for non-public treatment of materials filed under seal is included as Attachment 4. The Postal Service also filed under seal a non-public (unredacted) version of Governor's Decision No. 10-3 and a supporting financial model estimating the volume, revenue, costs and contribution of the China Post 2015 Agreement.

In Order No. 546, the Commission approved the addition of the Competitive Multi-Service Agreements product to the competitive product list, and included within that product an agreement with Koninklijke TNT Post BV and TNT Post PakketSERVICE Benelux BV (TNT Agreement).³ The Commission subsequently added bilateral agreements with Posten Norge AS (Norway Post Agreement) and the China Post Group (China Post 2011 Agreement).⁴ In its Order No. 840, the Commission also approved the TNT Agreement as the baseline agreement for purposes of functional equivalency analyses of subsequent agreements to be added to the Competitive Multi-Service Agreements product. Order No. 840, at 5. With respect to the China Post Group, the Commission approved the following bilateral agreements: China Post 2013 Agreement, Modified China Post 2013 Agreement, and China Post 2014 Agreement.⁵

On September 4, 2015, the Postal Service filed notice of errata to the certified statement included in Attachment 2 of the Postal Service's Notice.⁶

The China Post 2015 Agreement establishes prices and classifications for delivery in the United States of Air Parcel Post, Surface Air Lifted Parcels, Surface Parcel Post, Express Mail Service (EMS) and "a new bilaterally negotiated product." Notice at 4. The China Post 2015 Agreement is intended to become effective October

³ Order No. 546, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, Docket Nos. MC2010-34 and CP2010-95, September 29, 2010.

⁴ Order No. 840, Order Concerning An Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-69, September 7, 2011; Order No. 859, Order Concerning An Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-68, September 16, 2011.

⁵ Order No. 1591, Order Concerning An Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement (with China Post Group), Docket No. CP2013-23, December 21, 2012; Order No. 1752, Order Approving Modification of China Post 2013 Agreement, Docket No. CP2013-23, June 18, 2013; Order No. 2065, Order Approving An Addition Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2014-39, April 24, 2014.

⁶ Notice of United States Postal Service of Filing Errata, September 4, 2014.

1, 2015, and remain in effect until December 31, 2016 (15 months), unless terminated sooner. *Id.*; *id.*, Attachment 1, at 3 (Article 9, Termination).

The Postal Service asserts that the China Post 2015 Agreement is functionally equivalent to the inbound portion of the baseline TNT Agreement and that the prices comply with the requirements of 39 USC §3633(a). *Id.* at 7. The Postal Service also maintains that the China Post 2015 Agreement is substantially similar to the China Post 2014 Agreement. *Id.* at 3. Therefore, the Postal Service requests that the China Post 2015 Agreement be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product. *Id.*

COMMENTS

The Public Representative has reviewed the China Post 2015 Agreement and the supporting financial model filed under seal that accompanied the Postal Service's Notice. Based upon that review, the Public Representative concludes that the China Post 2015 Agreement is functionally equivalent to the TNT Agreement. Moreover, the negotiated prices applicable to inbound competitive services in the China Post 2015 Agreement are likely to generate sufficient revenue to cover costs.

Functional Equivalence. The Postal Service states that the China Post 2015 Agreement is functionally equivalent to the baseline agreement because the agreements remain similar in scope and purpose, and share most terms and clauses in common. *Id.* at 2. Moreover, the China Post 2015 Agreement is substantially similar to the inbound portion of the TNT Agreement with respect to the products and cost characteristics. *Id.* at 5. In this regard, the China Post 2015 Agreement establishes prices for the delivery of inbound Air Parcel Post and EMS, the same competitive shipping services as in the TNT Agreement, and inbound Surface Parcel Post. *Id.* at 4.

However, the Postal Service identifies differences between the China Post 2015 Agreement and the inbound portion of the TNT Agreement, including: revisions to Article 1: Purpose of the Agreement; Article 4: Limitation on Liability and Costs; Article 10: Dispute Resolution; Article 11: Construction; Article 12: Indemnification and Liability; and, Article 20: Assignment. Updates and additional details are included in:

Article 9: Termination; Article 14: Confidentiality Requirements; Article 16: Notices, concerning contact information for the Postal Service and China Post Group; Article 20: Assignment; and, Article 23: Term. New articles have been added, including: Article 8: Customs Inspection; Article 24: Intellectual Property, Co-Branding and Licensing; and, Article 25: Survival.

The Postal Service also identifies differences in the China Post 2015 Agreement with respect to attachments in the baseline agreement, specifically, Attachment 1 has been replaced by Annex 1: Settlement Rates. Annexes 2 through 11 have been added to the China Post 2015 Agreement.

A review of the supporting financial models for the China Post 2015 Agreement and the TNT Agreement reveals that agreements share similar cost and market characteristics. In terms of market characteristics, both agreements establish negotiated prices for the same competitive shipping services, inbound EMS, and inbound Air Parcel Post and Surface Parcel Post.⁷ In terms of cost characteristics, both financial models develop unit costs for mail processing, delivery, domestic transportation, and domestic other costs associated with inbound EMS, and inbound Air Parcel Post and Surface Parcel Post.⁸ The Public Representative therefore concludes that the China Post 2015 Agreement is functionally equivalent to the TNT Agreement.

39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's negotiated prices for competitive products must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service.

⁷ Compare the Service Descriptions and Stream codes in the TNT Agreement financial model, Excel file (Non-Public) Netherlands_Comp_IB_2010.08.09, worksheet tab 08_Pieces-Wgt & TDues_Rates, columns [B] and [C]; and the Service Descriptions and Stream codes in the China Post 2015 Agreement financial model, Excel file (Non-Public) China_Comp_IB_2015_FINAL, worksheet tab 08_Pieces-Wgt & TDues_Rates, columns [B] and [C].

⁸ Compare the cost characteristics in the TNT Agreement financial model, Excel file (Non-Public) Netherlands_Comp_IB_2010.08.09, worksheet tab 05_Product_Unit_Cost_Inputs, and the cost characteristics in the financial model, Excel file (Non-Public) China_Comp_IB_2015_FINAL, worksheet tab 05_Product_Unit_Cost_Inputs.

The Postal Service's financial model does not directly address whether the addition of the China Post 2015 Agreement to the Competitive Multi-Service Agreements product will result in the product as a whole covering costs as required by 39 U.S.C. § 3633(a)(2). However, the Postal Service's financial model indicates that the negotiated prices in the China Post 2015 Agreement will generate sufficient revenues to cover its costs. The Public Representative notes that in the FY 2014 Annual Compliance Determination (ACD) Report, the Commission determined that the Competitive Multi-Service Agreements product covered costs.⁹ Therefore, the addition of the China Post 2015 Agreement to the Competitive Multi-Service Agreements product will not cause the product's cost coverage to fall below 100 percent. As a result, the addition of the China Post 2015 Agreement to the Competitive Multi-Service Agreements product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2), and should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Finally, the addition of the China Post 2015 Agreement to the Competitive Multi-Service Agreements product should improve the likelihood that competitive products as a whole contribute an appropriate share to the Postal Service's institutional costs, consistent with 39 U.S.C. § 3633(a)(3).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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⁹ FY 2014 Annual Compliance Determination, Docket No. 2014ACR, March 27, 2015, at 78.